

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11851

EILEEN TRACI RACE,
as Personal Representative of the Estate of Ashley Nicole Seifried,
Deceased,
on behalf of the Estate and on behalf of the Estate's survivors,
EILEEN TRACI RACE,
Mother of deceased,
L.M.A., a minor of the deceased,
A.B.A., a minor of the deceased,

Plaintiffs-Appellants,

versus

GEORGE PAUL SMITH,
Sheriff, individually
and in his official capacity as
Sheriff of the Bradford County Sheriffs Office,

and in his official capacity as
Chief Corrections Officer for Bradford County Jail,
CAROL STARLING,
Cpt. individually
and in her official capacity as
Jail Administrator for the
Bradford County Sheriff's Office,
and in her official capacity as a
Corrections Officer for the Bradford County Jail,
RICHARD WALMSLEY,
LT., individually
and in his official capacity as
Operations Lieutenant for the Bradford County Sheriff's Office,
and in his official capacity as a
Corrections Officer for the Bradford County Jail,
WILLIAM GOODGE,
Sgt., individually
and in his official capacity as a
Corrections Officers for the Bradford County Jail,
KAREN STARR,
LPN, individually
and in her official capacity as
a Licensed Practical Nurse for the Bradford County Sheriff's Office,
SHIRLEY FORD,
LPN, individually
and in her official capacity as

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a Licensed Practical Nurse for the Bradford County Sheriff's Office,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:18-cv-00153-BJD-PDB

Before WILSON, BRANCH, and TJOFLAT, Circuit Judges.

PER CURIAM:

After a five-day trial, a jury found two Bradford County, Florida jail personnel not liable for the November 2015 death of Ashley Seifried following her detention in the county jail. Seifried was a habitual intravenous (IV) drug user and suffered from endocarditis as a result. Several years before her arrest, Seifried had mitral valve replacement surgery. Post-surgery, however, Seifried resumed using IV drugs. And in October 2015, she was arrested following a traffic stop for drug possession.

During her pretrial detention at the Bradford County jail, Seifried fell ill, complaining of chest pains and other symptoms, and was eventually sent to a hospital for an echocardiogram (EKG). Doctors concluded that the only way to save Seifried was a second mitral valve replacement. Yet the hospital denied Seifried surgery

because she had continued to use IV drugs after her first valve replacement. Seifried died one day later.

Eileen Race, Seifried's mother, sued several county officials under 42 U.S.C. § 1983, alleging they were deliberately indifferent to Seifried's serious medical needs in violation of her Eighth Amendment rights, resulting in her death. Only Nurse Starr and Officer Goodge went to trial (the other defendants won summary judgment). After the jury returned a verdict in the defendants' favor, Race filed a motion for new trial raising an array of issues. The district court denied her motion for new trial, and Race timely appealed. After careful consideration, and with the benefit of oral argument, we affirm.

I. Background

The relevant facts of this case—as reflected in the trial record—are the following.¹ On October 24, 2015, Seifried was arrested following a traffic stop for possession of drugs and drug paraphernalia. The arresting officer transported Seifried to the Bradford County Jail. During her pretrial detention at the jail, Seifried reported feeling sick and having chest pains to jail staff. Jail medical staff, including Nurse Starr (one of the two defendants here) evaluated Seifried several times. Her vitals were within a normal range, and she never appeared to be in acute distress.

¹ We give a general overview of the facts here, but provide additional background below in discussing the specific issues on appeal.

After a physical examination, the jail physician ordered a chest x-ray and bloodwork and arranged for Seifried to obtain an EKG at Shands Starke Hospital. Personnel at Shands Starke Hospital discovered that Seifried had an infected mitral valve, including “a lot of vegetation around [the] heart” and, on November 6, transferred her to the University of Florida (UF) Health Shands Hospital. Seifried’s only hope for survival was a mitral valve replacement. However, medical records showed that Seifried had previously had mitral valve replacement surgery for the same condition—endocarditis caused by IV drug abuse. Doctors at UF Health Shands Hospital declined to perform a second mitral valve replacement because of evidence that Seifried continued to abuse drugs after her first mitral valve replacement. Having been denied surgical intervention, Seifried died at the hospital the next day.

In 2018, Eileen Race, Seifried’s mother and personal representative of her estate and its survivors (Seifried’s minor children), filed suit in federal district court against jail and county officials for her daughter’s death. Relevant to this appeal, Race sued Sergeant Goodge (the jail supervisor) and Nurse Starr (a jail nurse) in their individual capacities under § 1983 on the grounds that they were deliberately indifferent to the serious medical needs of Seifried, resulting in her death. After discovery, Race’s

deliberate indifference claim against Goodge and Starr proceeded to trial.²

Before trial, Race filed several motions in limine to exclude, among other things, references to Seifried's drug use, the circumstances of her arrest—including that she was found with drugs and drug paraphernalia in her purse—and references to a county personnel investigation into one of plaintiff's witnesses, a former jail employee. As explained in greater depth in our discussion below, the district court denied the motion in limine as to Seifried's drug use, holding that the evidence was "relevant and significant to much of the evidence that will be adduced at trial." The district court granted Race's motion in limine regarding the circumstances of Seifried's arrest, calling them "irrelevant" and "highly prejudicial." And it granted Race's motion to exclude references to the investigation into her witness because the defendants did not oppose it.

After a five-day jury trial, the jury returned a verdict for Starr and Goodge. The verdict was returned on an interrogatory verdict form, in which the jury found that Seifried did, in fact, have "a serious medical need" and that Nurse Starr knew that "Seifried had a serious medical need that posed a risk of serious harm." But the jury also found that Nurse Starr did not fail to provide necessary medical care nor did her conduct cause Seifried's injuries. As to

² The district court granted summary judgment as to the other defendants, but denied it as to Nurse Starr and Officer Goodge.

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Goodge, the jury found that he did not even know that Seifried had a serious medical need.

After the verdict, Race filed a motion for new trial, raising various issues. The district court denied Race's motion for new trial, and Race timely appealed.

II. Standard of Review

"We review a district court's denial of a motion for a new trial for an abuse of discretion." *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1312 (11th Cir. 2013) (quotation omitted). We also review the district court's ruling on a motion in limine for abuse of discretion. *MidAmerica C2L Inc. v. Siemens Energy Inc.*, 25 F.4th 1312, 1325 (11th Cir. 2022). Under the abuse-of-discretion standard, "we may reverse a decision of the district court only if the court applies an incorrect legal standard, follows improper procedures in making its determination, or makes findings of fact that are clearly erroneous." *Id.* at 1325–26.

III. Discussion

On appeal, Race claims that she is entitled to a new trial, raising the following issues for our consideration: (1) admission of evidence of Seifried's IV drug use was improper; (2) references at trial to the circumstances of Seifried's arrest was improper; (3) the testimony of the defendants' expert—Dr. Stemer—allegedly exceeded his disclosed opinions; (4) the defense allegedly fabricated the reference to an attorney visit to Seifried in jail; (5) improper statements were made at closing argument by defense counsel on

the deliberate indifference standard and damages; and (6) testimony from defendant Goodge violated the district court's order excluding references to the personnel investigation into a former law enforcement officer who testified in the plaintiff's case. We consider these issues in turn. Because Race's challenges as to each issue lack merit, we affirm.

(a) *Evidence of Seifried's IV Drug Use*

Race argues that the district court erred in allowing evidence of and references to Seifried's drug use at trial, asserting that it was irrelevant and highly prejudicial. As explained below, however, because Race did not object to any of this evidence at trial, she failed to preserve the issue for ordinary appellate review.

Before trial, Race filed a motion in limine seeking to exclude evidence relating to "intravenous drug use by Plaintiff's decedent, Ashley Seifried." The district court denied Race's motion, concluding that "Ms. Seifried's IV drug use is relevant and significant to much of the evidence that will be adduced at trial," in part, because the defendants argued it was the cause of Seifried's endocarditis and the reason the UF hospital declined to give her a second mitral valve replacement. The district court explained that Seifried's history of drug use was "certainly prejudicial" but "not so prejudicial as to merit preliminary exclusion." It noted, however, that "the Court will entertain objections to cumulative or unnecessary references to her IV drug use at trial."

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Race points to one statement that she says is an “example” of an improper reference to drug use by the defendant. During the defense’s opening statement, counsel remarked:

[T]he endocarditis condition that Ms. Ashley Seifried had, it comes from IV drug use. It’s not the kind of condition that you just happen to get or you happen to contract it somehow. It comes from the individual using syringes to inject drugs into their veins. . . . They’re using dirty needles, in other words. And when they do that, those dirty needles have certain bacteria on them that once you shoot them into your system—you’re inserting that bacteria into your system—it gets into your bloodstream, and it goes to your heart. . . . So when they talk about the IV drug use, again, we’re simply talking about the fact and that being an important fact as to the cause of Ms. Seifried’s endocarditis. The experts will testify that her IV drug use is the most likely cause of her getting the endocarditis condition. . . . [And] even after her open-heart surgery to replace her infected mitral valve the first time, Ms. Seifried continued to do drugs. She continued to smoke cigarettes. She would not comply with her doctors’ orders.

Race did not object to the statements.

To preserve evidentiary errors, parties must raise timely objections. *See* Fed. R. Evid. 103(a)(1)(A). But after the court “rules definitively on the record—either before or at trial—a party need not renew an objection or offer of proof to preserve a claim

of error for appeal.” Fed. R. Evid. 103(b). In ruling on an evidentiary objection in the form of a motion in limine, the district court “makes a definitive ruling if its decision is final or with prejudice.” *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1297 (11th Cir. 2021). On the other hand, if the court’s ruling is tentative or without prejudice, the court has not ruled “definitively,” and “the objecting party must renew its objection at trial to preserve a claim of error for appeal.” *Id.*

In the district court proceedings before trial, Race sought to exclude introduction of evidence about Seifried’s prior drug use in her motion in limine. The district court denied Race’s motion, but that order was not “definitive.” The court found that Seifried’s history of drug use was “certainly prejudicial” but also relevant to the case and “not so prejudicial as to merit preliminary exclusion.” It noted, however, that because Seifried’s drug use was not in dispute “and not relevant to every facet of the case[,] [t]he Court will entertain objections to cumulative or unnecessary references to her IV drug use at trial.” This pretrial ruling was clearly tentative, in that the court declined “preliminary exclusion” of the evidence but invited Race to object to “cumulative or unnecessary references” at trial. And because Race did not object at trial, she failed to preserve the issue for appeal.

Generally, when a party fails to preserve an evidentiary objection, we review the admission of evidence for plain error. Plain error exists when a district court’s error was “plain”; affected the substantial rights of the objecting party; and “seriously

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affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1904–05 (2018) (quotation omitted). An error affects a party’s substantial rights if there exists “a reasonable probability that, but for the error, the outcome of the proceeding would have been different.” *Id.* (quotation omitted). The “onus to demonstrate plain error is on the party challenging the evidentiary ruling.” *Yates*, 21 F.4th at 1298. Further, our decision to reverse under plain error review when a party fails to preserve an evidentiary objection is discretionary. *Id.* at 1297–98; *see also* Fed. R. Evid. 103(e) (noting that “[a] court may take notice of a plain error affecting a substantial right” (emphasis added)). And we have declined to conduct a *sua sponte* plain error review “when th[e] appellant makes no effort to satisfy the standard.” *See, e.g., Yates*, 21 F.4th at 1298.

In this case, Race has made no effort to satisfy the plain error review standard. Indeed, she does not even raise as an alternative a plain error argument—opting instead to argue solely that her objection to the introduction of evidence about Seifried’s prior drug use was preserved for ordinary appellate review. So we need not *sua sponte* analyze this issue under plain error review.

But even if we were to review the introduction of the drug abuse evidence at trial for plain error, Race’s claim would fail. Seifried’s drug use was at the core of Race’s own theory of the case. As Race frames it in her briefing on appeal, “the stigma surrounding ‘drug seeking behavior’ was [the] reason Nurse Starr

did not provide Ms. Seifried necessary care for her serious medical need.” Because Race placed Seifried’s status as a drug-user at the heart of her case, she simply cannot claim a “reasonable probability” of a different result without the allegedly improper drug use evidence. *See Rosales-Mireles*, 138 S. Ct. at 1904–05.

(b) *Evidence Surrounding Seifried’s Arrest*

Race also challenges references at trial to the circumstances of Seifried’s arrest made by defense counsel and a defense witness. Race claims that a new trial is warranted because the evidence of Seifried’s arrest—including that she had drugs on her person—was highly prejudicial, excluded by the court’s order on her motion in limine, and deprived her of a fair trial. We disagree.

Before trial, Race sought to exclude evidence relating to the circumstances of Seifried’s arrest, including that she was carrying used syringes and other paraphernalia containing drug residue. The district court granted Race’s motion in limine, reasoning that the “circumstances surrounding Ms. Seifried’s arrest are irrelevant to the issues in the case and highly prejudicial.” Race points to two times evidence regarding the circumstances of Seifried’s arrest was nonetheless introduced by the defendants at trial. Defense counsel described Seifried’s arrest in her opening statement, remarking, among other things, that Seifried was carrying a pink purse containing “three used syringes [and] a silver spoon with white powder residue.” And later, Dr. Stemer—the defense’s medical expert—referenced these facts when he testified as part of the defendants’ case.

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However, before Dr. Stemer testified in the defendants' case, Race herself introduced Dr. Stemer's videotaped deposition in her case in chief, during which Dr. Stemer stated that "[Seifried] was arrested possessing drugs and drug paraphernalia."

Dr. Stemer was then called, in person, as a defense witness later in trial. During Dr. Stemer's direct examination, defense counsel asked why he did not think Seifried had stopped using drugs before her pretrial detention. Dr. Stemer responded "[w]ell, one week before being jailed, she had three syringes and a spoon that was caked with a white powder." At this point, Race objected and called for a mistrial, claiming that "this is the second time that this witness has gotten into the circumstances surrounding the arrest of Ashley Seifried, and obviously this was something that we've talked about." The district court overruled the objection.

Race is not entitled to a new trial based on the introduction of evidence related to Seifried's arrest. First, Race introduced evidence about Seifried's arrest herself when she played Dr. Stemer's video deposition in her case-in-chief, including his testimony about Seifried's arrest. "A party introducing evidence generally cannot complain on appeal that the evidence was erroneously admitted." *Ruiz v. Wing*, 991 F.3d 1130, 1140 (11th Cir. 2021) (quotation omitted). This is the rule "even when a party preemptively introduces evidence that the party sought to exclude in a motion in limine." *Id.* (quotation omitted). So, although the admission of evidence previously excluded by a motion in limine

could be grounds for a new trial, that is not the case when the complaining party herself introduced the evidence.

Second, even if we were to consider Race's challenge, the references to the circumstances of Seifried's arrest were harmless error. The jury heard evidence that Seifried was a habitual abuser of IV drugs. Indeed, as Race alludes to in her brief, a core aspect of the plaintiff's case was that "the stigma surrounding 'drug seeking behavior' was [the] reason Nurse Starr did not provide Ms. Seifried necessary care for her serious medical need." Given that both parties' theory of the case implicated Ms. Seifried's status as a drug user, Race has failed to explain how the references to finding drugs on Seifried at the time of her arrest for drug offenses were, as she claims, "extremely prejudicial" or "deprived [her of] a fair trial." The allegedly prejudicial evidence was already assumed by the jury or introduced by Race herself. Accordingly, the district court properly denied Race's motion for new trial on this claim.

(c) *Dr. Stemer's Expert Testimony*

Race also takes issue with Dr. Stemer's testimony for the defense, which she claims exceeded the opinions he disclosed before trial.

During discovery, Race deposed Dr. Stemer, an expert witness for the defense. Race then filed motions in limine to limit Dr. Stemer's testimony at trial to his opinions disclosed pretrial and to bar him from testifying to matters lacking in factual basis. The district court denied the motions as "premature and unripe,"

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because Race “merely asks the Court to correctly apply” the Federal Rules of Civil Procedure and Evidence on expert opinions. The court explained it was “not inclined to preliminarily exclude opinions that [Dr. Stemer] may not seek to offer.”

Race maintains that Dr. Stemer’s trial testimony exceeded his disclosed opinions or was otherwise not based in evidence. The instance she describes as “most egregious[]” was when Dr. Stemer testified that, after her mitral valve replacement, Seifried “subsequently had a hospitalization related to an automobile accident with a roll-over in which she may have actually sustained an injury to her thoracic spine, but that confirmed that she was back on drugs.” Later on in the direct examination, Stemer testified that the car crash hospitalization was a significant finding in his review of Seifried’s Shands Starke hospital records because the car crash “can cause chest pain.”

Race also points to other instances of allegedly undisclosed opinions (or those based on facts not in evidence): (1) the circumstances of Ms. Seifried’s arrest (discussed above); (2) that Shands Starke incorrectly failed to diagnose Ms. Seifried’s endocarditis shortly before her pretrial detention; (3) that Shands Starke incorrectly failed to diagnose Ms. Seifried’s blood clots shortly before her pretrial detention; (4) that injection of powdered drugs scars the veins and causes track marks; and, (5) that jail personnel had trouble obtaining Ms. Seifried’s blood because her veins were scarred from drug use.

Dr. Stemer's disclosed written opinion explains that he based his opinion on a review of Seifried's medical records. In it he discusses, among other things, her complaint of blood clots while in prison, and that "the patient's very poor venous access secondary to drug use resulted in multiple failed attempts to obtain[] blood specimens or venous access." He also opined on why Seifried was not diagnosed with endocarditis at her hospitalization immediately preceding her arrest, writing, "while this diagnosis [endocarditis] was strongly suspected during her hospitalization earlier in the summer of 2015, work up was ended prior to definitive diagnosis by the patient's discharge against medical advice."

Dr. Stemer's ultimate (written) conclusion was that Seifried's evidence of continued drug use meant she "was deemed not to be a surgical candidate" and that she was accordingly offered "only medical management which was effectively a death sentence given her underlying disease." "Even if the patient had been referred to the hospital two weeks earlier, denial of surgical intervention was an effective death sentence. This was beyond the control of the medical staff at the jail." Dr. Stemer's opinion on the futility of Seifried's situation absent surgical intervention remained unchanged at trial.

At trial, Race did not object to any of Dr. Stemer's testimony as exceeding the scope of his disclosed opinion or lacking basis in fact, and instead raised the issue in her motion for a new trial, which was denied.

Under Rule 26 of the Federal Rules of Civil Procedure, a party intending to call an expert witness at trial must provide a written report containing, among other things, “a complete statement of all opinions the witness will express and the basis and reasons for them.” Fed. R. Civ. P. 26(a)(2)(B)(i). The Federal Rules also set forth a district court’s options if a party violates Rule 26: “[i]n addition to or instead of [the] sanction [of exclusion]” the court may: (1) order payment of the expenses caused by the failure, (2) “inform the jury of the party’s failure,” and (3) “impose other appropriate sanctions.” Fed. R. Civ. P. 37(c)(1).

Race waived the issue by failing to object to Dr. Stemer’s allegedly improper testimony at trial, after the district court denied her motion in limine as “premature and unripe.” *See Yates*, 21 F.4th at 1297. Contemporaneous objections are particularly important in this context because they give the court “a chance to correct [the error] on the spot” by giving the expert a chance to explain apparent inconsistencies in his testimony and the court an opportunity to “rul[e] on the accuracy and admissibility of the challenged testimony.” *Christopher v. Cutter Labs.*, 53 F.3d 1184, 1192 (11th Cir. 1995). Accordingly, Race waived the issue.³

³ We note that Race makes no alternative argument that we should review this issue for plain error. The “onus to demonstrate plain error is on the party challenging the evidentiary ruling” and we can decline to conduct a review *sua sponte* if the appellant does not attempt to satisfy the plain error standard. *Yates*, 21 F.4th at 1298.

(d) *Defendant's Closing Argument: Attorney Visit*

Race further takes issue with a reference to Seifried's attorney visiting her in jail made by the defense in closing. Specifically, during closing argument, defendants' counsel discussed a video clip of Seifried in pretrial detention, which counsel described as showing "Ms. Seifried walking with no problem to her attorney visit—," at which point plaintiff's counsel objected: "He's not even commenting on the evidence." The court overruled the objection, stating, "it's argument." Defense counsel then described Seifried's visit with her attorney:

Even if we were to conduct plain-error review, Race's claim would still fail. Assuming *arguendo* that a plain error occurred, Race cannot show that Dr. Stemer's testimony substantially prejudiced her, leading to a reasonable probability of a different outcome at trial. *See Rosales-Mireles*, 138 S. Ct. at 1904–05. Dr. Stemer's main conclusion remained unchanged between his written disclosure and trial testimony, which, if accepted by the jury, was fatal to Race's case against the jail officials. In his written report, Dr. Stemer concluded that Seifried's continued drug use meant she "was deemed not to be a surgical candidate" and that she was accordingly offered "only medical management which was effectively a death sentence given her underlying disease." In his report, he also stated, "Even if the patient had been referred to the hospital two weeks earlier, denial of surgical intervention was an effective death sentence. This was beyond the control of the medical staff at the jail." Dr. Stemer never wavered on his opinion about the futility of Seifried's situation absent surgical intervention. In light of this unchallenged expert testimony, which, if believed, is fatal to Race's claim, it is hard to see how excluding the opinions Stemer allegedly failed to disclose would have led to a different outcome at trial. Accordingly, even if Race had argued for plain error review in the alternative, we would reject her claim.

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Ms. Seifried's lawyer was her advocate. He met with her in person. If she was in such need of medical care, wouldn't it be reasonable that as her legal advocate, he would have done something, anything? Raise an issue with the sheriff? File a motion with the court?

He did not. The plaintiff has not produced him as a witness. The one man from the outside who was on her team and who did, in fact, have a face-to-face visit with Ms. Seifried, the one person outside the jail who met with her in person four days into her stay at the jail, he didn't find anything necessary to do. That failure to act speaks volumes of her actual condition, and what this case is about is trying to rebuild what her condition was six years ago.

In her motion for new trial, Race argued that the reference to the attorney visit was "intentionally fabricated" and "a highly improper and prejudicial story." The district court denied her motion for new trial on this issue because there was ample evidence of an attorney visit—including plaintiff's own trial Exhibit 8.

On appeal, Race argues that the existence of an attorney visit during her pretrial detention is "completely unsupported by either fact or evidence." She also says the jury was misled by counsel's statement that someone "on her team" visited Seifried in pretrial detention because the jury could believe that a member of Race's civil trial team visited Seifried when she was supposedly exhibiting terrible symptoms and yet said nothing. We strongly disagree.

First, Race herself introduced evidence of an attorney visit, making her claim that the existence of an attorney visit as “completely unsupported by either fact or evidence” curious. Plaintiff’s Exhibit 8 includes the jail log entries for Seifried’s pretrial detention. Page 1 of the log clearly states “attorney visit” on October 29, 2015. Second, two defense witnesses testified that Seifried was visited in jail by her lawyer. So it is simply untenable to claim that the visit was fabricated by defense counsel.⁴

Moreover, Race’s contention that the jury might have thought that someone “on [Seifried’s] team” meant a member of Ms. Race’s civil trial team, and not Seifried’s criminal defense lawyer is baseless. Just before the excerpt from closing quoted above, defense counsel stated (without objection): “The second

⁴ Note: Race tacks on another allegation onto this claim. She says that defense counsel referred to medical records from Shands Starke that are not in evidence and possibly do not exist. Specifically, defense counsel stated that “the Shands Starke records from October 18 and 19[] made no mention whatsoever of Ms. Seifried’s visit only weeks earlier” and “[t]hey did not send records from Ms. Seifried’s admission in Shands Starke in late July and early August of 2015 for cardiac related issues.” However, the record reflects the existence of the documents. Among other instances, Dr. Goldstein, one of plaintiff’s experts, testified in his deposition and at trial that he reviewed the July 2015 medical records but could not recall “what was in that.” And Dr. Stemer’s written report discussed reviewing Seifried’s Shands Starke hospital records relating to treatment from “July 1, 2015 to October 27, 2015” and specifically referenced her “hospitalization earlier in the summer of 2015.” Dr. Stemer also referenced July 2015 hospital records at trial. Accordingly, we are not persuaded by Race’s contention about the medical records allegedly not in evidence.

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thing that's only been mentioned a little bit is that on October 29, Ms. Seifried had an in-person visit with her *criminal defense* attorney."

As a result, Race is not entitled to a new trial on this ground.

(e) *Defendants' Closing Argument: Deliberate Indifference Standard*

Race also objects to two aspects of defense counsel's closing arguments: her articulation of the deliberate indifference standard and a comment she made about Seifried in the context of damages available to her minor children.

As to the deliberate indifference standard, Race points to several statements she claims suggested to the jury that Race needed to prove intentional conduct, not deliberate indifference. She gives several examples from defense counsel's closing argument: "This is about the intentional conduct, the deliberate indifference, of two specific individuals, Karen Starr and Bill Goodge"; "[Y]ou have to believe that Ms. Starr deliberately withheld or delayed help for Ms. Seifried because Ms. Starr considered Ms. Seifried a drug seeker, a drug addict, and a junkie"; "But the jury instructions . . . will require you to determine whether . . . Ms. Starr deliberately decided not to send Ms. Seifried to the hospital." Notably, Race did not object to any of these alleged misstatements nor did she propose that the district court provide the jury a curative instruction.

The district court subsequently charged the jury: “To succeed on this claim, Ms. Race must prove each of the following facts by a preponderance of the evidence . . . that Sergeant Goodge or Karen Starr knew that Ashley Seifried had a serious medical need that posed a risk of serious harm” and “that Sergeant Goodge or Karen Starr failed to provide or get necessary medical care for Ashley Seifried’s serious medical need and—in deliberate indifference of the risk of serious harm.” The district court explained that the jury needed to determine whether the defendants “actually knew Ashley Seifried had a serious medical need and required immediate attention.”

In her motion for new trial, Race first raised defense counsel’s alleged misstatement of the deliberate indifference standard. And, of course, the district court denied her motion.

Because Race failed to object at trial, we review the district court’s denial of Race’s motion for new trial on these grounds for plain error review only. *Higgs v. Costa Crociere, S.P.A. Co.*, 969 F.3d 1295, 1307 (11th Cir. 2020). Her claim fails because she cannot show prejudice—*i.e.*, that the alleged error affected her substantial rights. *See Rosales-Mireles*, 138 S. Ct. at 1905. Even if defense counsel’s repeated references to “deliberate” or “intentional” conduct arguably misstated the standard, the record establishes that the district court properly instructed the jury on the appropriate standard—in open court and in writing. And “in this Circuit a jury is presumed to follow jury instructions.” *Brink v.*

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Direct Gen. Ins. Co., 38 F.4th 917, 924 (11th Cir. 2022) (quotation omitted).

Even under ordinary appellate review, “[w]e are reluctant to set aside a jury verdict because of an argument made by counsel during closing arguments.” *Vineyard v. Cnty. of Murray*, 990 F.2d 1207, 1214 (11th Cir. 1993) (per curiam). And “statements made in oral arguments must be plainly unwarranted and clearly injurious to constitute reversible error.” *Showan v. Pressdee*, 922 F.3d 1211, 1216 (11th Cir. 2019) (quotation omitted). Accordingly, we cannot say that Race has shown error—let alone plain error—and the district court did not abuse its discretion in denying her motion for new trial on these grounds.

Race also challenges a comment by defense counsel when, in describing the damages available to Seifried’s minor children, counsel suggested Seifried was a bad or nonexistent parent to her children.⁵ We need not consider whether this statement was improper because any error was harmless: the jury never reached damages, having concluded that neither defendant was liable for Seifried’s death.

⁵ Defense counsel’s statement was, “[t]he point is that the judge’s instructions only allow you to award damages for parental companionship, instruction, and guidance, which begs the question, was Ms. Seifried a parent to her two children? And the evidence, I will tell you, does not support that.”

(f) *Sergeant Goodge's Testimony*

Race also complains about two aspects of the defendant Sergeant Goodge's trial testimony. First, Goodge testified that Seifried told him in jail that "[a]s soon as I get out of here, I'm heading to the nearest drug house that I can." On cross-examination, Goodge acknowledged that he did not mention Seifried's drug house comment in his deposition, commenting that "I really didn't think about it until after we talked, but . . . I may have misspoke [sic]."

Contrary to Race's claim, we cannot say that Goodge "contradicted" his deposition testimony because he did not discuss his conversations with Seifried in his deposition. Indeed, Race's counsel never asked Goodge at his deposition about what Seifried told him in jail. Furthermore, Race cross-examined Goodge about the "drug house" comment, attempted to impeach him with the prior deposition testimony, and had ample opportunity to argue against Goodge's credibility in closing. Accordingly, the district court did not abuse its discretion in denying Race a new trial due to the "drug-house" comment.

Second, Race argues that she is entitled to a new trial because Goodge's testimony violated the district court's pretrial order excluding discussion of a county investigation into one of her witnesses. That order excluded reference to a county investigation into Corporal Holmes, a former employee who was supervised by the defendant Officer Goodge. Holmes, serving as a plaintiff's witness, testified that there was a stigma in the jail surrounding

“drug seeking behavior,” which plaintiff argued led jail personnel to ignore Seifried’s serious medical need.

At trial, however, Race’s counsel invited the discussion of Corporal Holmes’ investigation. Specifically, in cross-examining Goodge, plaintiff’s counsel asked whether Goodge “ever ha[d] any problem with [Corporal Holmes],” who Goodge supervised. Defense counsel objected and requested a sidebar. At the sidebar, defense counsel argued that the plaintiff should be bound by her own motion in limine excluding reference to the investigation. The district court warned plaintiff not to open the door to the subject of the investigation into Holmes. Then plaintiff’s counsel asked Goodge about Holmes’ credibility asking, “Can you think of any ulterior motive he would have to have testified as he did?” Goodge answered: “Other than he was under investigation after that, and that’s the only reason I could think.” At this point, plaintiff’s counsel moved for a mistrial, which the court denied, reasoning “I think that [counsel’s question] invited the response.”

In other words, Race flagrantly invited any error, which dooms her claim on appeal. *United States v. Jernigan*, 341 F.3d 1273, 1289–90 (11th Cir. 2003) (“[T]he accepted rule is that where the injection of allegedly inadmissible evidence is attributable to the action of the defense, its introduction does not constitute reversible error.” (quotation omitted)). We reject her claim, accordingly. *See id.*

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Opinion of the Court

21-11851

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For these reasons, we AFFIRM the district court's denial of Race's motion for new trial.

AFFIRMED.